

Appln. No. 10/646,184  
Amendment dated December 20, 2006  
Reply to Office Action mailed September 1, 2006

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REMARKS

Reconsideration is respectfully requested.

Claims 1 through 27 remain in this application. No claims have been cancelled. No claims have been withdrawn or added.

Paragraphs 1 through 10 of the Office Action

Claims 1 through 27 have been rejected under 35 U.S.C. §102(e) as being anticipated by Morrison.

Claim 1 requires, in part, "providing a marker file in said loaded computer system software, said marker file indicating whether said loaded computer system software was loaded in a computer manufacturer's factory, loaded by a system restoration CD (SRCD), or loaded by downloading an image". Claims 12 and 23 each include similar requirements. The feature of the claimed invention thus provides information about the source of the software loaded on the system, whether the source be the computer manufacturer, the system restoration CD, or an image downloaded to the system. As noted in the present patent application at ¶0003, "[t]here are many reasons why a computer may freeze or completely crash, among which the system software load process may be a major reason". Thus, as a result, the patent application noted at ¶0004 (emphasis added):

[0004] The computer system software load process may be critical to understanding and resolving the issue why a computer freezes or crashes. Thus, it would be advantageous to provide a method to determine the different system software load process: whether the loaded computer system software was loaded in a computer manufacturer's factory, loaded by a system restoring CD (SRCD), or loaded by downloading an image. By communicating the system software load information back to a central authority when or after a computer crashes or freezes, the computer manufacturer may be able to use such information (e.g., by performing a statistical analysis of the data, and the like) to trace the cause of why the computer crashes or freezes and find a corresponding solution.

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In contrast, rather than seeking to determine the *software* load process for a subject computer as recited in the claims, the Morrison patent application discusses a system for determining the *hardware* configuration of a computer system, as set forth, for example, in ¶0005 of Morrison, where it states (emphasis added):

[0005] The present invention is a flexibly designed, efficient mechanism for identifying specific information regarding the hardware configuration of a computer system, for purposes of online crash analysis as well as for other purposes. The invention is used in association with applications, particularly those directed by remote computers functioning as servers, which benefit from having readily available, specific hardware-configuration information about a particular computer system.

The purpose of this determination by the Morrison system of the hardware configuration is because it is believed by Morrison that many system crashes may be traced back to the configuration of the hardware, and not the software (or the manner in which the system software was loaded), as set forth in ¶0004 of Morrison (emphasis added)

[0004] The expedited communication of real-world driver errors to OEMs and driver vendors has the potential of enhancing their ability to identify and correct such errors and reduce associated support costs. However, prior to the invention described herein, OCA's effectiveness had been significantly limited by the absence of an efficient means for OCA to obtain more specific hardware-configuration information about the machine on which a system crash occurred. The end user crashes reported by OCA were difficult for driver writers to reproduce and thus to diagnose and correct. It was found that crashes were typically specific to particular PC system models or chipsets, but this was not easy to determine through OCA because of the lack of a simple and efficient means of gathering information identifying a particular PC system by details of its OEM hardware configuration. Previous solutions to the general problem of identifying machines have suffered from costliness and complexity, however. Typically, such solutions have involved engineering changes, or have been dependent on the broad adoption of complex standards among the large number of PC OEMs.

Thus, while the claimed invention is directed to determining the manner in which system software was loaded on a computer, the system of the

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Morrison patent application takes a significantly different, if not opposite, approach in that the hardware configuration is analyzed. Consistent with this aim of the Morrison system, the Morrison patent application states at ¶0006 that (emphasis added);

[0006] In an embodiment of the invention a client computer detects an event such as an attempt to load an application, driver, etc. or a crash, such as of a driver, an application, or the operating system itself. The client responds to the event by initially locating in its file system, such as in a driver directory, a marker file. The marker file preferably has an extension that distinguishes it from the driver files in the directory. The marker file embodies, in one or both of its name and its contents, information indicative of the hardware configuration of the first computer. The hardware information stored in the marker file may alternatively be stored in a read only memory of the client, such as with the BIOS. The client can either use the information itself, such as when selecting an appropriate version of software to install, or transmit some or all of the hardware configuration information from the file to another computer, such as for online crash analysis.

Thus, the marker file of the Morrison patent application is clearly directed to containing information about the hardware configuration of the computer system, and does not include any discussion of the marker file including any information about software, much less the manner in which the software was loaded onto the computer system.

Turning not to the specifics of the Office Action, it is alleged in the rejection that the requirement of claim 1 quoted above is disclosed in the Morrison patent application, specifically at ¶¶0017, 0018, 0021 and the last two lines of Table 3. Looking first to ¶0017, it states:

[0017] The invention is described in the general context of computer-executable instructions executed by a computer. Components of the computer 110 may include, but are not limited to, a processing unit 120, a system memory 130, and a system bus 121 that couples various system components to the processing unit 120. The computer 110 typically includes a variety of computer-readable media, including volatile/nonvolatile and removable/non-removable computer data storage media. One such medium is the system memory 130, typically including both ROM 131 and RAM 132. A basic input/output system (BIOS) 133, containing the basic routines that help to transfer information between elements within the computer 110, such as during

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start-up, is typically stored in ROM 131. RAM 132 typically contains data and program modules that are immediately accessible to or presently being operated on by processing unit 120. Generally, program modules include routines, programs, objects, components, data structures, etc., that perform particular tasks or implement particular abstract data types. By way of example, and not limitation, FIG. 1 illustrates an operating system 134, application programs 135, other program modules 136, and program data 137.

However, while this portion of the Morrison patent application may disclose that the computer includes an operating system and application programs, there is noting here that indicates that any marker file "indicat[es] whether said loaded computer system software was loaded in a computer manufacturer's factory, loaded by a system restoration CD (SRCD), or loaded by downloading an image", as required by the claims. Further, ¶0018 of Morrison states:

[0018] The computer 110 may also include other removable/non-removable, volatile/nonvolatile computer storage media. By way of example only, FIG. 1 illustrates a hard disk drive 140 that reads from and writes to non-removable, nonvolatile magnetic media such as a hard disk 141, a magnetic disk drive 151 that reads from and writes to a removable, nonvolatile magnetic disk 152, and an optical disk drive 155 that reads from and writes to a removable, nonvolatile optical disk 156 such as a CD-ROM. The drives and their associated computer storage media discussed above and illustrated in FIG. 1 provide storage of computer-readable instructions, data structures, program modules, and other data for the computer 110. In FIG. 1, for example, the hard disk 141 is illustrated as storing an operating system 144, application programs 145, other program modules 146, and program data 147. Among its many other functions, the operating system 134 loaded in memory 130 enables computer programs and machine instructions to control hardware devices in the computer system 100, including nonvolatile storage media such as the hard disk 141. Data stored on the hard disk 141 is typically accessed by the operating system 144 through the files in the filesystem, a high-level representation of the stored data. The computer 110 may operate in a networked environment using logical connections to one or more remote computers, such as a remote computer 180.

Again, while there is some discussion of the computer system having an operating system, there is no disclosure of any marker file "indicating whether said loaded computer system software was loaded in a computer

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manufacturer's factory, loaded by a system restoration CD (SRCD), or loaded by downloading an image". Paragraph 0021 of Morrison states (emphasis added):

[0021] In accordance with the invention, the marker file (211 and 315) residing on the computer's filesystem stores information identifying a computer system 100 according to important aspects of its original hardware configuration. In one embodiment of the invention, the marker file (211 and 315) identifies the OEM (229 and 311) that manufactured the computer system 100 and the OEM's model name for that system, among other system-identifying information. This information enables processes or facilities to benefit from having ready access to highly specific, finely-grained information about particular computer hardware systems, including but not limited to systems of online analysis, diagnosis and reporting of kernel-mode crash data such as Windows XP's OCA, which is illustrated in the flowchart contained in FIG. 4.

Yet again, nothing here discloses or suggests to one of ordinary skill in the art that the marker file includes any information regarding the manner in which the computer software was loaded on the computer, much less the three manners listed in the claim.

Finally, turning to the last two lines of the Table 3 on page 4 of the Morrison published patent application, which states:

Driver distribution information (e.g., whether the driver is available to Windows XP users by way of the online Windows Update facility)

However, this portion of the Morrison patent application only indicates, at best, whether software is *available for downloading* from Windows Update online, not whether any software has been downloaded in any such manner. Simply because software may have been made available for downloading does not give any indication that the software was actually downloaded or in what specific manner the software was downloaded onto the computer.

It is therefore submitted that the Morrison patent would not lead one of ordinary skill in the art to the applicant's claimed invention as defined in claims 1, 12 and 23, especially with the requirements set forth above, and

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therefore it is submitted that claims 1, 12 and 23 are allowable over the prior art. Further, claims 2, 4 and 6 through 11, which depend from claim 1, claim 3, which depends from claim 2, claim 5, which depends from claim 4, claims 13, 15, 16 and 17 through 22, which depend from claim 12, claim 14, which depends from claim 13, claim 16, which depends from claim 15 and claims 24 through 27, which depend from claim 23 also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

Withdrawal of the §102(e) rejection of claims 1 through 27 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

GATEWAY, INC.

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